

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 449 of 1984

in

APPEAL FROM ORDER No 75 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KAMALABEN BHAILABHAI PATEL

Versus

FETEHSINHJI MOTISINHJI THAKORE

Appearance:

MR JR NANAVATI for Appellant

MR MC SHAH for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 13/11/98

ORAL JUDGEMENT

Being aggrieved by the order passed on 31.1.1984

by learned Single Judge in Appeal from Order No. 75 of 1982, the appellant [original appellant-plaintiff] has preferred this appeal.

2. Learned Single allowed the appeal and set aside the order passed by the learned trial Judge and Darkhast proceedings were restored and this matter was remanded to the Civil Judge, Senior Division, Nadiad for rendering the decision on application afresh in the light of the observations made by the learned Single Judge.

3. So far as the contention with regard to the question whether the application is barred by limitation or not, learned Single Judge, after considering the material placed on record pointed out that in the absence of exact date, the question whether the application is within time or not cannot be decided and with a view to see that there is no injustice to either party, remanded the matter for rendering the decision afresh on the merits. For this purpose, the contention raised on behalf of the learned Advocate appearing for the appellant has been considered in detail. The application filed under Order 21 Rule 19 was filed on 15th September 1997. As on the record there is nothing to show on which date the sale was knocked down, the matter was, in our view rightly, remanded by the learned Single Judge.

4. Another application was submitted before the trial Court on the ground that the proceedings are required to be dropped in view of the provisions contained in the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. There was also a question whether the provisions contained in the Bombay Tenancy and Agricultural Land Act would apply or not. A grievance was made that no opportunity was given to the applicant to meet with the contention and it appears that in the interest of justice, the matter was remanded with a liberty to file objections, with a direction for deciding the application submitted for the aforesaid purposes. In our view, the learned Judge has rightly remanded the matter with liberty to the parties to place relevant material on record.

5. Under the circumstances, we do not find any reason to interfere with the order passed by the learned Single Judge and the learned Civil Judge, Senior Division, Nadiad is directed to dispose of the execution proceedings within a period of three months, as directed by the learned Single Judge, from the date of receipt of the write of the order of this Court. The Registry of this Court shall forward the writ as well as the record

and proceedings, if lying here, to the trial Court within
two weeks from today.

Appeal is dismissed. No order as to costs.
csm./ -----